

STATE OF VERMONT
HUMAN SERVICES BOARD

In re)	Fair Hearing No. 17,826
)	
Appeal of)	

INTRODUCTION

The petitioner appeals the decision by the Department of Prevention, Assistance, Transition, and Health Access (PATH) denying coverage under the Vermont Health Access Plan (VHAP) for an office visit to an orthopedic specialist in Boston, Massachusetts. The issue is whether the Department is obligated to provide VHAP coverage for office visits to physicians who are not in the VHAP network. The pertinent facts are not in dispute.

FINDINGS OF FACT

1. The petitioner is a recipient of VHAP benefits. He has chronic orthopedic problems and last spring his treating physician in Vermont referred him to a specialist in Boston to evaluate neck pain from which he was suffering.

2. The petitioner went to the referral on June 3, 2002. When he arrived at the specialist's office he was told that there would be a \$300 charge for the visit and that he would

have to make an immediate payment of \$125, which the petitioner did.

3. The petitioner called his treating physician from the specialist's office to explain his problem. His treating physician's office then called the petitioner's VHAP managed care plan, and was told that VHAP did not require prior approval for referrals to specialists. Based on this, the petitioner assumed that he would be reimbursed by VHAP for the \$125 payment and that VHAP would cover the unpaid portion of the specialist's fee.

4. Unfortunately, what neither the petitioner, the VHAP managed care office, nor the petitioner's treating physician knew was that the specialist does not accept Vermont Medicaid or VHAP payments, and it does not appear that the specialist's office made this clear to anyone.

5. Following the petitioner's request for a fair hearing in this matter the Department agreed to try to enroll the specialist in VHAP for purposes of paying this bill. The specialist has informed the Department that the managed care program that he belongs to in Massachusetts does not allow its providers to accept payments from any other state plans or benefit programs.

6. So far (i.e., as of the last day of hearing in this matter, August 29, 2002), the specialist has not billed the petitioner for the balance of the office visit (\$175).

7. The petitioner does not allege that anyone associated with the Department or with his VHAP managed care plan gave either him or his treating physician any false or misleading information.

ORDER

The Department's decision is affirmed.

REASONS

The VHAP regulations and the federal Medicaid Waiver under which the VHAP program operates do not specifically address the issue in this matter. However, the Board has held that federal and state Medicaid law is controlling in the absence of specific provisions in the VHAP program. Fair Hearing 16,414. The Medicaid regulations are clear that payments are limited to those providers who have been approved under Medicaid. Medicaid Manual § M155.1 (see also, 42 C.F.R. § 447.10).

The Member Guidebook that was provided to the petitioner when he was enrolled in VHAP managed care states (at p. 13)

that it is the patient's responsibility to pay when "you choose to go to a provider who does not accept Medicaid/Dr. Dynasaur or VHAP." This case appears to be an unfortunate situation in which the petitioner and his treating physician in Vermont were unaware that the referral being made was to a doctor who does not, and will not, accept Vermont Medicaid/VHAP. Although the petitioner arguably did not "choose" the specialist his treating physician referred him to, nothing either in regulations or as a matter of fairness under the circumstances would dictate that the Department now be liable for the specialist's fee. It appears the Department has made a good faith effort to enroll the specialist in VHAP in order to cover the petitioner's visit. Unfortunately, circumstances appear to prevent this doctor from enrolling as a Vermont Medicaid/VHAP provider.

Hopefully, the petitioner can work out an arrangement for a reduced fee either with the specialist or with his treating physician (both of whom are now aware of the petitioner's predicament). However, inasmuch as the Department's decision in this matter is in accord with the pertinent regulations, the Board is bound to affirm. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 17.

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